

SNELL & WILMER L.L.P.  
Alan L. Sullivan (3152)  
Todd M. Shaughnessy (6651)  
Amy F. Sorenson (8947)  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101-1004  
Telephone: (801) 257-1900  
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP  
Evan R. Chesler (admitted pro hac vice)  
David R. Marriott (7572)  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York 10019  
Telephone: (212) 474-1000  
Facsimile: (212) 474-3700

*Attorneys for Defendant/Counterclaim-Plaintiff  
International Business Machines Corporation*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES  
CORPORATION,

Defendant/Counterclaim-Plaintiff.

**EX PARTE MOTION FOR LEAVE TO  
FILE OVERLENGTH MEMORANDUM  
IN SUPPORT OF IBM'S MOTION FOR  
SUMMARY JUDGMENT ON SCO'S  
CONTRACT CLAIMS (SCO'S FIRST,  
SECOND, THIRD AND FOURTH  
CAUSES OF ACTION)**

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Pursuant to DUCivR 7-1(e), Defendant/Counterclaim-Plaintiff International Business Machines Corporation (“IBM”) respectfully submits this Ex Parte Motion for Leave to File Overlength Memorandum in Support of IBM’s Motion for Summary Judgment on SCO’s Contract Claims (SCO’s First, Second, Third and Fourth Causes of Action), consisting of approximately thirty-four pages of argument, exclusive of face sheet, table of contents and authorities, preliminary and fact statements, and appendices and exhibits.

In its Memorandum in Support of its Motion for Summary Judgment, IBM shows that Plaintiff/Counterclaim Defendant The SCO Group, Inc.’s (“SCO”) First, Second, Third, and Fourth Causes of Action fail as a matter of law for at least four independent reasons. Each of these causes of action relates to UNIX System V licensing agreements that IBM and Sequent executed with AT&T in 1985. Moreover, each of these causes of action depends on SCO’s unsupportable theory that the agreements give it the right to control tens of millions of lines of original IBM source code and prevent IBM from contributing its own original works to Linux if they were ever part of IBM’s AIX or Dynix products, even if that original work was created by or for IBM and contains no UNIX System V code. To dispose of SCO’s contract claims, IBM must address each of the independent reasons for dismissal separately as it applies to SCO’s contract claims. The complexity of each of these claims and the facts underlying the reasons these claims should be dismissed as a matter of law require detailed, although succinct, legal argumentation and recitation of facts.

IBM therefore required approximately nine additional pages of argument beyond the twenty-five pages allotted by DUCivR 56. Accordingly, IBM respectfully requests that it be granted leave to file a Memorandum in Support of Motion for Summary Judgment on SCO’s Contract Claims (SCO’s First, Second, Third and Fourth Causes of Action) consisting of approximately thirty-four pages of legal argument.

DATED this 25th day of September, 2006.

SNELL & WILMER L.L.P.

/s/ Amy F. Sorenson

Alan L. Sullivan  
Todd M. Shaughnessy  
Amy F. Sorenson

CRAVATH, SWAINE & MOORE LLP  
Evan R. Chesler  
David R. Marriott

*Attorneys for Defendant/Counterclaim-Plaintiff  
International Business Machines Corporation*

Of Counsel:

INTERNATIONAL BUSINESS MACHINES CORPORATION  
Alec S. Berman  
1133 Westchester Avenue  
White Plains, New York 10604  
(914) 642-3000

*Attorneys for Defendant/Counterclaim-Plaintiff  
International Business Machines Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of September, 2006, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court and delivered by CM/ECF system to the following:

Brent O. Hatch  
Mark F. James  
HATCH, JAMES & DODGE, P.C.  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101

Stephen N. Zack  
Mark J. Heise  
BOIES, SCHILLER & FLEXNER LLP  
100 Southeast Second Street, Suite 2800  
Miami, Florida 33131

and by U.S. Mail, postage pre-paid to:

Robert Silver  
Edward Normand  
BOIES, SCHILLER & FLEXNER LLP  
333 Main Street  
Armonk, New York 10504

/s/ Amy F. Sorenson